

Hopkinton Zoning Board of Adjustment
Minutes
June 1, 2006

Acting Chairman Toni Gray opened the Hopkinton Zoning Board of Adjustment meeting of June 1, 2006, at 7:15 PM in the Town Hall. Members present: Charles Koontz, John Boatwright, and Richard Hesse. Absent: Chairman Janet Krzyzaniak.

With only four members present and the possibility of a tie vote that would mean that the Motion for Rehearing is denied, Mrs. Gray gave Attorney Leeming and his client and opportunity to either move forward or to post-pone review. In response, Attorney Leeming agreed to move forward. Chairman Gray reiterated the fact that a tie vote of the Board would mean that the Motion for Rehearing is denied. Attorney Leeming stated that he understood.

- I. Motion for Rehearing submitted by Simon C. Leeming, Esquire on behalf of Stuart F. Nelson, dated and received on May 1, 2006 (see attached copy). Motion for Rehearing pertains to the Zoning Board of Adjustment's decision of April 4, 2006, in which the Board denied the Applicant's application (TH06-2V-4-1) for a Variance to construct a residential dwelling as permitted in the R-2 district on a non-conforming lot with less than the required frontage on a public road. The property is located off Clement Hill Road, shown on Tax Map 208 as Lot 14. The application was submitted in accordance with paragraph 5.2.1 of the Hopkinton Zoning Ordinance.

There was no public testimony accepted.

The Board discussed whether there was new information in the Motion for Rehearing with Mrs. Gray stating that the only new information provided related to Item 13 of the Motion. Item 13 referred to Attorney Patrick McNicholas being approached by Richard and Jayne Schoch to if the Applicant is willing to sell the Lot.

Mr. Koontz referred to Item 8, stating that he did not realize that the thirty (30) foot right-of-way was included in the Nelson Lot. Mrs. Gray believed that it was understood and represented that the 30-feet of frontage was not part of the Nelson Lot.

Mr. Hesse referred to page 5 of the April 4, 2006 meeting minutes in which Attorney McNicholas made reference to three (3) Variances that had previously been issued for what he believed to be similar situations. Mr. Hesse believed that the Applicant has the burden of proof to draw similarities. Mr. Koontz concurred, but believed that Attorney McNicholas was asserting that every time a Variance was applied for the construction of a residence it was granted. Again, Mr. Hesse stated that the Applicant has the burden of proof to draw similarities which appears to not have been done.

The Board reviewed the confirmatory deed concerning the frontage. Mrs. Gray noted that the confirmatory deed for the strip of frontage had been obtained after the April 4 meeting.

The Board then briefly discussed the Applicant's argument with regards to grandfathered rights, but did not believe the argument should hold much weight.

Mr. Hesse noted that in reviewing the Board's Rules of Procedure there are no specific standards for granting a rehearing. In response, Mrs. Gray stated that the standards are the same as adopted by the State that is if there is new evidence or an error of law. At this point, Mrs. Gray stated that she would be inclined to revisit the matter as it relates to the law.

Mr. Boatwright was not convinced that new material had been submitted that would warrant a rehearing.

Mr. Hesse believed that if a rehearing is granted it should be clear that it is based on assertion of the three (3) similar cases as referenced in the supplemental to the Motion. The Applicant should be required to develop a record with regards to his argument of discriminatory. Again, it is not the Board's responsibility to explain the similarities.

Mr. Koontz expressed an interested in the information now being provided with regards to the frontage; reiterating the fact that during the April meeting it appeared that it was represented that the lot had no frontage on a Class V road.

With four members voting, two voted in favor (Gray and Koontz) and two voted in opposition (Hesse and Boatwright). The Motion for Rehearing failed.

III. Adjournment.

Acting Chairman Gray declared the meeting adjourned at 7:45 PM. The next regular scheduled meeting of the Board is Tuesday, June 6, 2006, at 7:00 PM in the Town Hall.

Karen L. Robertson
Planning/Zoning Director

Pursuant to New Hampshire RSA 674:2, any party to the action or proceedings, or any person directly affected thereby, may apply for a rehearing. Application, in writing, must be submitted to the Zoning Board of Adjustment within thirty (30) calendar days beginning the date upon which the Board voted to approve or disapprove the application. Such a request must set forth the grounds on which it is claimed the decision is unlawful or unreasonable. The Board must decide to grant or deny the rehearing within thirty (30) days.